

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC on behalf)	MB Docket No. 13-131, CSR 8794-E
of its subsidiaries and affiliates)	MB Docket No. 13-132, CSR 8795-E
)	MB Docket No. 13-133, CSR 8796-E
)	
Petitions for Determination of Effective)	
Competition in Communities in Minnesota)	

MEMORANDUM OPINION AND ORDER

Adopted: February 23, 2016

Released: February 24, 2016

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as Petitioner, has filed with the Commission petitions¹ pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in the communities listed on Attachment A (the "Communities"). Petitioner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended ("Communications Act"),² and the Commission's implementing rules,³ and that it is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DIRECTV, Inc. ("DIRECTV") and DISH Network ("DISH"). Oppositions to the petitions were filed by the North Metro Telecommunications Commission ("North Metro")⁴ (for the MB Docket 13-131 petition), the North Suburban Communications Commission ("North Suburban")⁵ (for the MB Docket 13-132 petition), and the South Washington County Telecommunications Commission ("South Washington")⁶ (for the MB Docket 13-133 petition).⁷

¹ Comcast Cable Communications, LLC Petitions for Special Relief (May 13, 2013) (MB Docket Nos. 13-131, 13-132, and 13-133).

² See 47 U.S.C. § 543(l)(1)(B).

³ 47 C.F.R. § 76.905(b)(2).

⁴ Opposition of the North Metro Telecommunications Commission to Comcast's Petition for Special Relief, MB Docket No. 13-131, dated June 7, 2013. North Metro is a certified rate regulation authority that acts on behalf of its member municipalities, one of which is an Attachment A Community (Lexington, Minnesota). *Id.* at 1 n.1.

⁵ Opposition of the North Suburban Communications Commission to Comcast's Petition for Special Relief, MB Docket No. 13-132, dated June 7, 2013. North Suburban is also a certified rate regulation authority that acts on behalf of its member municipalities, several of which are Attachment A Communities (Arden Hills, Little Canada, Mounds View, New Brighton, North Oaks, St. Anthony, and Shoreview, Minnesota). *Id.* at 1 n.1.

⁶ Opposition of the South Washington County Telecommunications Commission to Comcast's Petition for Special Relief, MB Docket No. 13-133, dated June 7, 2013. South Washington is also a certified rate regulation authority that acts on behalf of its member municipalities, all of which are Attachment A Communities (Cottage Grove, Grey Cloud Island, Newport, St. Paul Park, and Woodbury, Minnesota). *Id.* at 1 n.1.

⁷ Hereinafter we will collectively refer to North Metro, North Suburban, and South Washington as the "Minnesota Local Commissions." Each of the three individually submitted oppositions and attached expert declarations are

(continued....)

Petitioner filed Replies to all three Oppositions.⁸

2. In June 2015, a Commission order adopted a rebuttable presumption that cable operators are subject to one type of effective competition, commonly referred to as competing provider effective competition.⁹ Accordingly, in the absence of a demonstration to the contrary, the Commission now presumes that cable systems are subject to competing provider effective competition, and it continues to presume that cable systems are not subject to any of the other three types of effective competition, as defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.¹⁰ For the reasons set forth below, we grant Petitioner's petitions.

II. THE COMPETING PROVIDER TEST

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multichannel video programming distributors ("MVPDs"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.¹¹ This test is referred to as the "competing provider" test. Pursuant to the *Effective Competition Order*, absent evidence to the contrary, the Commission presumes that the competing provider test is met.

A. The First Part

4. The first part of this test has three elements: the franchise area must be "served by" at least two unaffiliated MVPDs who offer "comparable programming" to at least "50 percent" of the households in the franchise area.¹² As explained in the *Effective Competition Order*, "we find that the ubiquitous nationwide presence of DBS providers, DIRECTV and DISH, presumptively satisfies the" first part of the test for competing provider effective competition, absent evidence to the contrary.¹³ The Oppositions do not contest the fact that Comcast has satisfied the first part of the test. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast, we thus find that the first part of the test is satisfied.

B. The Second Part

5. The second part of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise

(...continued from previous page)

substantially, and in the cases of the declarations, completely, identical. Hereinafter we will collectively refer to the three oppositions as the "Oppositions."

⁸ Reply to Opposition to Petition for Special Relief, MB Docket No. 13-131, dated June 20, 2013; Reply to Opposition to Petition for Special Relief, MB Docket No. 13-132, dated June 20, 2013; Reply to Opposition to Petition for Special Relief, MB Docket No. 13-133, dated June 20, 2013. All three of Petitioner's replies are substantially identical and hereinafter we will collectively refer to the three replies as the "Replies."

⁹ See *Amendment to the Commission's Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 30 FCC Rcd 6574 (2015) ("*Effective Competition Order*").

¹⁰ See 47 U.S.C. § 543(l)(1); 47 C.F.R. §§ 76.905(b), 76.906.

¹¹ 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

¹² 47 C.F.R. § 76.905(b)(2)(i).

¹³ *Effective Competition Order*, 30 FCC Rcd at 6580-81, ¶ 8.

area.¹⁴ As explained in the *Effective Competition Order*, “[w]ith regard to the second prong of the test, we will presume that more than 15 percent of the households in a franchise area subscribe to programming services offered by MVPDs other than the largest MVPD.”¹⁵ The Minnesota Local Commissions argue that Comcast has not satisfied the second part of the competing provider effective competition test. The Commissions claim that the “allocation methodologies” used by SNL Kagan to identify the proper zip code plus four codes are “unverified and there is no universally accepted data base to corresponds [sic] to zip + 4 codes and political boundaries.”¹⁶ They claim that Comcast has only provided “the end results without the underlying allocations and assignments made by SNL Kagan,” making it “impossible to determine the accuracy of the underlying data.”¹⁷ Comcast, in its Replies, argues that the information provided includes the underlying data for the reports and the Oppositions have failed to identify a “single error” in any of the data it submitted.¹⁸

6. The Minnesota Local Commissions’ arguments lack merit. They have not identified any specific errors in the nine-digit zip code report submitted by Petitioner. Comcast provided all of the zip code and DBS subscriber data needed to verify whether it properly included a particular zip code.¹⁹ Despite being in possession of this data, the Minnesota Local Commissions do not specifically challenge any of the zip codes contained in the SNL Kagan report, nor did they challenge the subscribership data submitted in the petitions. For the above reasons, the arguments put forth by the Minnesota Local Commissions fail to rebut the presumption of competing provider effective competition. In accordance with the presumption of competing provider effective competition, and based on the information submitted by Comcast and the Minnesota Local Commissions, we thus find that the second prong of the test is satisfied.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED** as to the Communities listed on Attachment A hereto.

8. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to or on behalf of any of the Communities set forth on Attachment A **IS REVOKED**.

¹⁴ 47 C.F.R. § 76.905(b)(2)(ii).

¹⁵ *Effective Competition Order*, 30 FCC Rcd at 6581-82, ¶ 9.

¹⁶ Oppositions at 3. Nine-digit zip codes are relevant because Petitioner used the data SNL Kagan provided to purchase a subscriber tracking report from the Satellite Broadcasting and Communications Association, identifying the number of subscribers attributable to the DBS providers within the Attachment A Communities. Petitions at 6, 7.

¹⁷ Oppositions at 5.

¹⁸ Replies at 2-3.

¹⁹ See CSR 8794-E Petition at Exhibit 4; CSR 8795-E Petition at Exhibit 5 and accompanying CD; CSR 8796-E Petition at Exhibit 6 and accompanying CD. Indeed, as the Petitioner observes, the consultant retained by the Minnesota Local Commissions relied upon the very same type of data in a previous case. See Replies at 3 (citing *Comcast Cable Comm’ns, LLC*, 28 FCC Rcd 5508 (MB 2013)).

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

²⁰ 47 C.F.R. § 0.283.

ATTACHMENT A

MB Docket No. 13-131, CSR 8794-E

MB Docket No. 13-132, CSR 8795-E

MB Docket No. 13-133, CSR 8796-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUIDs	CPR*	2010 Census Households	Estimated DBS Subscribers
MB Docket No. 13-131				
Lexington	MN0375	21.60%	787	170
MB Docket No. 13-132				
Arden Hills	MN0297	17.96%	2,957	531
Little Canada	MN0300	17.91%	4,393	787
Mounds View	MN0301	21.80%	4,954	1,080
New Brighton	MN0302	17.77%	8,915	1,584
North Oaks	MN0303	19.87%	1,746	347
St. Anthony	MN0305	19.96%	3,848	768
Shoreview	MN0306	20.14%	10,402	2,095
MB Docket No. 13-133				
Cottage Grove	MN0396	28.71%	11,719	3,365
Grey Cloud Island	MN0400	26.32%	114	30
Newport	MN0397	21.64%	1,354	293
St. Paul Park	MN0401	26.90%	1,970	530
Woodbury	MN0395	26.87%	22,594	6,070

*CPR = Percent of competitive DBS penetration rate.